

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Steven Taccogna, Stratford

File No. 2020-040B

FINDINGS AND CONCLUSIONS

The Complainant asserted various allegations related to petition pages circulated in support of Richard Marcone's attempt to primary the endorsed candidate for Democratic Registrar of Voters during the 2020 Election cycle in the Town of Stratford.¹

Law

1. General Statutes § 9-410 provides, in pertinent part:

(a) The petition form for candidacies for nomination to municipal office or for election as members of town committees shall be prescribed by the Secretary of the State and provided by the registrar of the municipality in which the candidacy is to be filed or duplicate petition pages shall be produced in accordance with section 9-409, and signatures shall be obtained only on such forms or such duplicate petition pages. Such form shall include, at the top of the form and in bold print, the following:

WARNING

IT IS A CRIME TO SIGN THIS PETITION

IN THE NAME OF ANOTHER PERSON

WITHOUT LEGAL AUTHORITY TO DO SO

¹ The following are the Commission's findings and conclusions based on those portions of the Complainant's statement of complaint which the Commission could reasonably construe as alleging facts amounting to a specific violation of those laws within the Commission's jurisdiction. Any statements within the Complaint not addressed herein either did not specifically allege a violation or alleged facts which if proven true would not have amounted to a violation within the Commission's jurisdiction. Moreover, as indicated below, allegations related to Respondent David Harden are addressed in SEEC File No. 2020-040A.

AND YOU MAY NOT SIGN THIS PETITION

IF YOU ARE NOT AN ELECTOR.

The form shall include thereon a statement of instructions to persons using the form and shall indicate the date and time by which it shall be filed and the person with whom it shall be filed. The form shall provide spaces for the names and addresses of the candidates, the offices to which nomination is sought or the positions to which election is sought and the political party holding the primary, and shall provide lines for the signatures, street addresses, dates of birth and the printing of the names of enrolled party members supporting the person or persons on behalf of whose candidacy the petition is used. Only as many candidates may be proposed in any one primary petition for the same office or position as are to be nominated or chosen by such party for such office or position; but any one primary petition may propose as many candidates for different offices or positions as there are nominations to be made or positions to be filled.

(b) The names of enrolled party members signing a primary petition need not all be on one sheet but may be on several sheets, but no person shall sign more than one petition page for the same candidate or candidates. Any person who signs a name other than the person's own to a primary petition filed under the provisions of this section or who signs a name other than the person's own as circulator of such a petition shall be fined not more than one hundred dollars or imprisoned not more than one year or both. Each such sheet shall indicate the candidate or candidates supported, the offices or positions sought and the political party the nomination of which is sought or which is holding the primary for election of town committee members. No page of such a petition shall contain the names of enrolled party members residing in different municipalities and any page thereof which has been certified by the registrars of two or more municipalities shall be rejected by the registrar. Withdrawal of petition signatures shall not be permitted.

(c) Each circulator of a primary petition page shall be an enrolled party member of a municipality in this state who is entitled to vote. Each petition page shall contain a statement signed by the registrar

of the municipality in which such circulator is an enrolled party member attesting that the circulator is an enrolled party member in such municipality. Unless such a statement by the registrar appears on each page so submitted, the registrar shall reject such page. No candidate for the nomination of a party for a municipal office or the position of town committee member shall circulate any petition for another candidate or another group of candidates contained in one primary petition for the nomination of such party for the same office or position, and any petition page circulated in violation of this provision shall be rejected by the registrar. No person shall circulate petitions for more than the maximum number of candidates to be nominated by a party for the same office or position, and any petition page circulated in violation of this provision shall be rejected by the registrar. Each separate sheet of such petition shall contain a statement as to the authenticity of the signatures thereon and the number of such signatures, and shall be signed under the penalties of false statement by the person who circulated the same, setting forth such circulator's address and the town in which such circulator is an enrolled party member and attesting that each person whose name appears on such sheet signed the same in person in the presence of such circulator, that the circulator either knows each such signer or that the signer satisfactorily identified the signer to the circulator and that the spaces for candidates supported, offices or positions sought and the political party involved were filled in prior to the obtaining of the signatures. Each separate sheet of such petition shall also be acknowledged before an appropriate person as provided in section 1-29. Any sheet of a petition filed with the registrar which does not contain such a statement by the circulator as to the authenticity of the signatures thereon, or upon which the statement of the circulator is incomplete in any respect, or which does not contain the certification hereinbefore required by the registrar of the town in which the circulator is an enrolled party member, shall be rejected by the registrar. Any individual proposed as a candidate in any primary petition may serve as a circulator of the pages of such petition, provided such individual's service as circulator does not violate any provision of this section.

2. General Statutes § 9-410 requires that each individual who circulates a petition must provide an attestation under the penalties of false statement that each person who signed

that petition signed in the circulator's presence, and that each signatory was either known to the circulator or satisfactorily identified him or herself to the circulator.

3. A requirement of General Statutes § 9-410 is that the circulator's attestation be true. Accordingly, if the circulator signed a General Statutes § 9-410 petition statement that he or she knew or reasonably should have known was untrue, that circulator will be deemed to have violated General Statutes § 9-410. See *In the Matter of a Complaint by Matthew O'Brien, et al, Coventry*, File No. 2019-113; *In the Matter of a Complaint by Gregory Cann, Stratford*, File No. 2019-108.
4. Additionally, due to the extraordinary nature of the COVID-19 pandemic and the danger posed by the act of collecting petition signatures, Governor Lamont issued Executive Order 7LL, modifying the procedures for collecting both primary and nominating petitions. As concerned primary petitions, EO 7LL reads in pertinent part:

...

WHEREAS, to reduce the spread of COVID-19, the United States Centers for Disease Control and Prevention and the Connecticut Department of Public Health (DPH) recommend implementation of community mitigation strategies to increase slow transmission of the virus, including cancellation of gatherings of ten people or more and social distancing in smaller gatherings; and

WHEREAS, public health experts have determined that it is possible to transmit COVID-19 even before a person shows symptoms and through aerosol transmission; and

WHEREAS, there exists a compelling interest in reducing the risk of transmission of COVID-19 among candidates seeking election, their supporters who are seeking to contact potential voters and the public at large; and

WHEREAS, the process of qualifying for ballot access through in-person petitioning as required under Title 9 of the General Statutes is a basic and vital requirement of our state constitution and our election laws, the purpose of which is to ensure that voters have the opportunity to choose

...

- 2) **Changes to the Petitioning Process for Ballot Access for Major Parties.** For a candidate for nomination of a political party to a state, district, or municipal office who has filed a single candidate committee statement under section 9-604(a) of the General Statutes or a certification under 9-604(b) of the General Statutes with the State Elections Enforcement Commission by 4:00 p.m. on May 26, 2020:
- a. Notwithstanding the provisions of sections 9-400 and 9-406 of the General Statutes, the number of signatures obtained by circulated petition otherwise required of a candidate for nomination by a political party to a state, district or municipal office shall be reduced by thirty percent.
 - b. Notwithstanding the provisions of sections 9-400, 9-404a, and 9-409 of the General Statutes, the deadline for filing such petitions shall be extended by two days.
 - c. Notwithstanding sections 9-404b and 9-410 of the General Statutes, a petitioning signature shall be accepted as valid without attestation of the circulator or acknowledgment otherwise required by sections 9-404b and 9- 410 of the General Statutes if: (i) an enrolled party member signs a petition containing only his or her signature that is mailed by U.S. mail to the candidate and later to the registrar of the municipality by the applicable deadline; or (ii) an enrolled party member signs a petition containing only his or her signature, which signature may be scanned or photographed electronically and sent by electronic mail to the candidate and later to the registrar of the municipality by the applicable deadline along with a copy of the email demonstrating the electronic transmission of the petition by the enrolled party member. Any petition submitted in

accordance with subdivisions (i) or (ii) of this subsection shall contain the information required under sections 9-404a through 9-404c, and 9-406, 9-409 and 9-410 of the General Statutes and shall include a statement by the enrolled party member attesting to his or her identity, qualification as an elector and enrolled party member and shall be signed under the penalties of false statement. If more than one signature is on a petition page, all the requirements of sections 9-404b and 9-410 of the General Statutes must be satisfied, provided that any existing Executive Orders governing remote notarizations may be utilized. Nothing in this Order shall preclude petitioning by any other means set forth in sections 9-404a through 9-404c of the General Statutes.

Background and General Information

5. The allegations here concern the August 11, 2020 primary for the Democratic Party Nomination for Registrar of Voters in the Town of Stratford. Richard Marcone, the incumbent Democratic Registrar of Voters, was not endorsed for re-election by his party.
6. Mr. Marcone filed paperwork to attempt to petition and force a primary for the nomination.
7. Twenty-two different circulators submitted petition pages on Mr. Marcone's behalf in late May and early June 2020.
8. Additionally, a number of single-signature pages lacking a circulator page were submitted pursuant to the special procedure enumerated in Section (2) (c) of EO 7LL.
9. In the end, 60 petition pages bearing 556 total signatures were submitted on Mr. Marcone's behalf. 488 signatures were certified and counted, which was 30 more than the 458 signature threshold required to force a primary in that race.
10. Mr. Marcone qualified for the August 11, 2020 primary, but lost the primary to the endorsed candidate.

Allegation

11. The Complainant here was, at all times relevant to the instant Complaint, the chair of the Stratford Democratic Party Committee.
12. The Complainant set forth a number of allegations with the stated goal of seeking to disqualify petition pages and prevent a primary.
13. Some of the allegations in the instant Complaint related to ethical concerns not regulated by Title 9. For instance, the Complainant took issue with Mr. Marcone leading the office doing the signature verification of petitions directly concerning Mr. Marcone's candidacy. Such conduct is not within the jurisdiction of the Commission nor is the Commission aware of any law or regulation that prohibits such conduct.
14. The allegations over which the Commission has jurisdiction broke out to three counts:
 - a. **Count One** concerned whether Respondent Registrar Mr. Marcone should have accepted a petition page circulated by Janee Pust-Marcone in which the "Certification of Acknowledging Officer," signed by a Justice of the Peace, is missing the exact date of certification;
 - b. **Count Two** concerned whether the Mr. Marcone should have accepted a petition page submitted without certification pursuant to Governor's Executive Order 7LL on which two signatures were written, but one was labeled as "dup" and not counted; and
 - c. **Count Three** concerned whether nine signatures on two different pages collected by circulator (and Town Councilor) David Harden may have been signed by the same person (and as such, whether Mr. Harden's circulator attestation was false). This count is addressed separately in File No. 2020-040A.

Investigation

Count One

15. In Count One, the petition page circulated by Janee Pust-Marcone contained a full collection of 20 signatures, 19 of which were verified and counted.
16. The "Circulator's Statement of Authenticity of Signatures" was filled out in full.

17. The “Certification of Acknowledging Officer” had almost all of the fields filled out including, but not limited to, the location where the signature was witnessed as well as the month and year. The date line next to the signature was not completed, as alleged.

Count Two

18. Count Two concerns a single petition page that was submitted without the back page and which was accepted by Respondent Registrar Richard Marcone pursuant to EO 7LL.
19. The page at issue in Count Two was submitted via email on June 15, 2020 and contained the signatures of Shawn P. Sharnick and Kellie Sharnick.
20. The signature for Shawn Sharnick had an X next to the name and the word “Dup.”
21. The investigation found another page submitted via email and accepted, also on June 15, 2020, in which Shawn Sharnick was the sole signatory.

Analysis

Count One

22. The Complainant alleged here that the missing date in the “acknowledgement” was fatal and that the entire page should have been rejected.
23. However, there is no requirement in § 9-410 that the “acknowledgement,”² in this case by a Justice of the Peace, meet such a stringent requirement.
24. Section 9-410 is very specific as to many of the form requirements for the petition pages and the consequences of failing to meet those requirements (e.g., the page must be rejected

² “An acknowledgment is the formal declaration, before an authorized official, by the person who executed an instrument, that it is his free act and deed. It serves to authenticate the instrument by furnishing formal proof, through the action of the public official taking the acknowledgment, that the instrument was actually executed by the person whose signature appears on it.” *Commercial Credit Corporation v. Carlson*, 114 Conn. 514, 517, 159 A. 352. “In this state where no special form is prescribed by statute, ‘a certificate is sufficient which identifies the subscriber, specifies the writing subscribed, states the capacity in which he executed it and certifies his acknowledgment thereof.’” *R.I. Hosp. Nat’l Bank of Providence v. Larson*, 17 Conn. Supp. 28, 30, 1950 Conn. Super. LEXIS 47, *6 quoting *Commercial Credit Corporation v. Carlson*, supra, 518.

if it is missing either/both the registrars attestation and/or the circulator's statement of authenticity).

25. However, a missing date on the "acknowledgement" is not enumerated as fatal to accepting the page.
26. Moreover, Connecticut courts have previously held that the failure of a notary to include the date that an acknowledgement was taken on an instrument is not fatal to such instrument. See e.g., *Reice v. O'Sullivan*, Docket Nos. 115438, CV10-5013487S, 2011 Conn. Super. LEXIS 1137, at *2-3 (Super. May 4, 2011) ("Defendant also asks for a nonsuit on the ground that the notary public who took the acknowledgment of plaintiff Richard Reice on his answers to interrogatories failed to fill in the blank for the day in October of 2010 that the acknowledgment was taken. This claim borders on being frivolous. The answers were clearly 'under oath' as required by P.B. §13-7(a). The exact date of the acknowledgment does not impact the thirty-day deadline which is closed as of the 'date of certification of service' [of the answers] (§13-7(b)) which in this case was October 11, 2010. The failure to fill in the blank for the day was clearly a 'no harm—no foul' situation." (alterations in original)).
27. Accordingly, Count One should be dismissed.

Count Two

28. The question raised here—whether the Mr. Marcone should have accepted a petition page submitted without certification pursuant to Governor's Executive Order 7LL on which two signatures were written, but one was labeled as "dup" and not counted—is unique and unprecedented and concerns a time-limited Executive Order implemented due to extraordinary circumstances.
29. In pertinent part, EO 7LL states that "a petitioning signature shall be accepted as valid without attestation of the circulator or acknowledgment otherwise required by sections 9-404b and 9-410 of the General Statutes if: (i) an enrolled party member signs a petition containing only his or her signature..." and also states that "[i]f more than one signature is on a petition page, all the requirements of sections 9-404b and 9-410 of the General Statutes must be satisfied."
30. Based on the two pages examined during the investigation, it appears that Mr. and Mrs. Sharnick sent one page with both their signatures and then subsequently sent the second page with only Mr. Sharnick signing the petition page.

31. Mr. Sharnick's signature on the two-signature page was dismissed as "Dup" and not counted, but Mrs. Sharnick's signature was counted without requiring the full requirements of § 9-410, which would include the full circulator attestation page.
32. Considering the above, the Commission declines to conclude that Registrar of Voters Richard Marcone violated General Statutes § 9-410 for accepting the page with Mrs. Sharnick's signature (and the rejected "Dup" signature).
33. The unique circumstances of implementing a brand new and one-time-only petitioning procedure with short notice and little to no guidance (the Executive Order was released just a month earlier with no other explanatory text or guidance) auger in favor of assuming the most favorable interpretation in this instance.
34. Accordingly, the Commission will take no further action as to Count Two.

ORDER

The following Order is recommended on the basis of the aforementioned findings:

Count One: *Dismissed.*

Count Two: *No further action.*

Adopted this 1st day of September, 2021 at Hartford, Connecticut.



Stephen T. Penny, Chairperson
By Order of the Commission